

**ORIGINAL**

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC 20554

In the Matter of )  
Amendment of Section 73.622(i) )  
Post-Transition Table of DTV Allotments, )  
Television Broadcast Stations )  
(Seaford, Delaware) )

MB Docket No. 09-230

**ACCEPTED/FILED**

**OCT - 5 2017**

To: Office of the Secretary, FCC  
For: The Commission

Federal Communications Commission  
Office of the Secretary

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**OPPOSITION TO MOTION TO DISMISS**

PMCM TV, LLC ("PMCM"), by its attorneys and pursuant to 47 C.F.R. § 1.45(b), hereby opposes the September 22, 2017 Motion to Dismiss ("Motion") filed by Western Pacific Broadcast LLC ("WPB") in the above-captioned proceeding. In support whereof, the following is shown.<sup>1</sup>

The Motion asks the Federal Communications Commission ("FCC" or "Commission") to dismiss PMCM's September 22, 2016 Petition for Reconsideration in this long-pending proceeding ("PFR"). The PFR seeks reconsideration of the Commission's August 4, 2016 decision<sup>2</sup> denying PMCM's June 2, 2014 Application for Review of three prior Media Bureau decisions in this proceeding. The premise of the Motion is that when PMCM sold station KJWP, Wilmington, Delaware on August 31, 2017 (the "KJWP Sale"), PMCM lost standing to continue to prosecute the PFR. WPB's argument fails.

This proceeding is a notice and comment rule making in which the Commission continues to assess the allocation of a new television station to the state of Delaware, first

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<sup>1</sup> Please note undersigned counsel's new law firm and address.

<sup>2</sup> *Seaford, Delaware*, Memorandum and Order, 31 FCC Rcd 9388 (2016).

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proposed in a Notice of Proposed Rule Making released on December 18, 2009.<sup>3</sup> From this proceeding's inception, participation has been open to all interested persons.<sup>4</sup> PMCM has in fact participated from the beginning and at multiple stages of this proceeding, including most recently, by filing the PFR.<sup>5</sup> The central argument PMCM is currently pursuing by means of the PFR is that the FCC's allocation of a television channel to Seaford, Delaware is not consonant with 47 U.S.C. § 331(a) ("Section 331(a)"). More specifically, PMCM has shown that, once the United States Court of Appeals for the District of Columbia Circuit overturned the FCC's denial of PMCM's earlier noticed move of KJWP from the State of Wyoming to fill (what PMCM has termed in this proceeding) Delaware's "VHF void,"<sup>6</sup> the FCC's articulated basis for the Seaford allotment in this proceeding evaporated, necessitating rescission of that allotment. That argument remains very much intact on the other side of the KJWP Sale.<sup>7</sup>

As the Commission is aware, PMCM pioneered the use of Section 331(a) by relying on it to fill VHF voids in both Delaware and adjacent New Jersey. And as the record of this proceeding reflects, PMCM has an abiding interest in the continued proper and lawful implementation by the FCC of this statutory provision. The KJWP Sale has not diminished PMCM's interest therein nor has it lessened the relevance of the arguments PMCM has advanced

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<sup>3</sup> *Seaford, Delaware*, Notice of Proposed Rulemaking, 24 FCC Red 14596 (MB 2009) ("*Seaford NPRM*").

<sup>4</sup> *Seaford NPRM* at ¶ 6; see also 47 C.F.R. § 1.415 (affording all "interested persons" the opportunity to participate in notice and comment rule making proceedings).

<sup>5</sup> 47 C.F.R. § 1.429 affords "any interested person" the right to seek reconsideration of a final Commission order in a notice and comment rule making proceeding.

<sup>6</sup> *PMCM TV, LLC v. Federal Communications Commission*, 701 F.3d 380 (D.C. Cir. 2012).

<sup>7</sup> In other words, the KJWP Sale does not alter the core facts underlying the Section 331(a) analysis.

in this proceeding.<sup>8</sup> Therefore, it remains for the Commission to resolve PMCM's PFR arguments, including that Section 331(a) cannot support the allocation of a Delaware channel *in addition to* the channel brought to Delaware by PMCM. PMCM properly continues to pursue issues in this notice and comment rule making which implicate Section 331(a) and bear directly on the public interest.

WPB cites no case precedent in support of its Motion.<sup>9</sup> Rather, WPB is improperly trying to import into the notice and comment rule making context the type of "standing" concept embedded in 47 C.F.R. § 73.3584.<sup>10</sup> But no rule requires "interested persons" to demonstrate standing in order to participate in the rule making process, including filing petitions for reconsideration. To the contrary, 47 C.F.R. §§ 1.415 and 1.429 expressly permit PMCM's participation in this matter. Phrased another way, the notice and comment rule making process allows PMCM, an experienced proponent of Section 331(a)'s proper implementation, to prosecute to ultimate resolution the Section 331(a) issues raised in the PFR.<sup>11</sup>

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<sup>8</sup> Whether or not PMCM owns KJWP, KJWP filled Delaware's VHF void and thereby vitiated the Commission's bedrock reliance on Section 331(a) in this proceeding.

<sup>9</sup> The fact that PMCM previously explained in a reply pleading in this proceeding how its ownership of KJWP fit within certain standing concepts (see Motion at n.4) did *not* create a general standing test for participation in notice and comment rule making proceedings before the Commission. 47 C.F.R. §§ 1.415 and 1.429, cited above, govern instead.

<sup>10</sup> 47 C.F.R. § 73.3584 affords a "party in interest" the right to file a petition to deny against an application. Non-parties in interest ("any person") may file only informal objections pursuant to 47 C.F.R. § 73.3587.

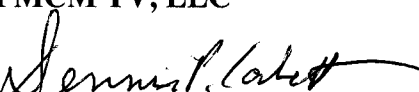
<sup>11</sup> Although WPB's reliance on certain standing concepts is inapposite here, PMCM notes for the record that it continues to own station WJLP, the station that PMCM relocated to the State of New Jersey pursuant to Section 331(a). WJLP has been involved in FCC proceedings for some time. One such proceeding was the subject of an FCC decision issued within the last month. *Request For Declaratory Ruling By Meredith Corporation And "Alternative PSIP Proposal" By PMCM TV, LLC For WJLP (formerly KVVN(TV), Middletown Township, New Jersey, FCC 17-118 (rel. Sept. 15, 2017) ("PMCM PSIP Order")*. The *PMCM PSIP Order* took an expansive definitional view of the "markets" in which WJLP competes, including with KYW, Philadelphia. See, e.g., *PMCM PSIP Order* at ¶ 32 (the predicted signal contours of WJLP and KYW

## CONCLUSION

The Motion is a transparent effort by WPB to further its *private* interests by short-circuiting the *public* interest analysis that lies at the heart of the PFR and, ultimately, this notice and comment rule making proceeding. The Motion should be summarily dismissed or, in the alternative, denied.

Respectfully submitted,

PMCM TV, LLC

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October 5, 2017

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overlap). KYW is home to the Philadelphia DMA as defined by Nielsen, the same DMA in which WPB's WMDE, Dover, Delaware, operates. While these issues remain in litigation, it should be noted that under the FCC's rationale, WJLP and WMDE both compete in the Philadelphia DMA. Furthermore, the *PMCM PSIP Order* entails FCC interpretations of Section 331(a) (*see, e.g., id.* at ¶¶ 13 and 26) (also still under challenge), underscoring the reality that proper overall interpretation and implementation by the FCC of Section 331(a) remain of vital interest to PMCM.

## CERTIFICATE OF SERVICE

I, Carolyn Mahoney, hereby certify that a copy of the foregoing Opposition to Motion to Dismiss was served on October 5, 2017, by first-class, postage prepaid, U.S. mail, unless otherwise noted, to the following:

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